ORGANISATION DES NATIONS AUTOCHTONES DE GUYANE
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For: **Committee on the Elimination of Racial Discrimination**
United Nations Office of the High Commissioner for Human Rights
8-14 Avenue de la Paix,
CH-1211 Geneva 10,
Switzerland

Re: 86th Session – Presentation of an Alternative Report to the Report Submitted by France

San José of Costa Rica and Metz,
Thursday, 9 April 2015

Honourable Members of the Committee on the Elimination of Racial Discrimination,

In consideration of the Committee's 86th Session, during which France's report comprising its twentieth and twenty-first periodic reports will be reviewed, we wish to submit this alternative report, which focuses on the situation of the indigenous peoples of Guiana.

Indeed, French legislation and institutional practices are contrary to the inherent rights of indigenous peoples and remain far from complying with the recommendations issued and reiterated by your honourable Committee with regard to the necessary recognition and implementation of the differentiated rights of these subjects of law. For this reason, we detail below the various violations of the *Convention on the Elimination of All Forms of Racial Discrimination* committed by the French State to the detriment of indigenous peoples.

Thank you for your attention to this communication, honourable Committee Members, and please accept our very best regards.

Respectfully,

Karine Rinaldi Florencine Edouard

1. Presentation of Indigenous Peoples and Local Communities (*Tribal* Peoples, *Bushinengue* or *Noirs-Marrons*) in Guiana

1.1 Presence of these Peoples on Guianese Territory

Guiana, located in South America, is a region as well as a French Overseas Department. It is bordered to the west by Suriname, to the south and east by Brazil and to the north by the Atlantic Ocean. 80% of its population is concentrated in the north, along the 320 km coastline; the hinterland (90% of the territory) is covered by dense equatorial forests and is accessible only by plane or boat, by way of the rivers.[1] In the interior, the "population is established mainly in the villages along the two major rivers, the Oyapock River to the east and the Maroni River to the west."[2]

Before the colonial period, Guiana was inhabited by various indigenous groups whose combined population was estimated at 30,000 people.[3] Currently, there is no official census of the indigenous and tribal populations in Guiana (where *tribal* peoples are called *local communities*, or *Noirs-marrons* [Maroon blacks] or *Bushinengue* [people of the forest]), since France refuses to carry out ethnic statistical analysis (despite numerous requests from the Committee). As a result, the figures vary. According to some sources, members of indigenous peoples are estimated at approximately 10,000 people, and members of local communities (tribal peoples) at approximately 60,000 people.[4] According to other sources, local communities (tribal peoples) represent approximately 4,000 people, and indigenous peoples represent between 3,500 to 7,000 people.[5] In addition, Mr. Tiouka indicated in 2002 that the "number of Indigenous people living in Guiana is currently estimated at fifteen thousand, according to figures from the Federation of Indigenous Organizations of French Guiana".[6] Similarly, according to other 2010 sources, which also indicate that it "is indeed very difficult to get precise official figures given the constitutional inability to conduct censuses on the basis of ethnic criteria", the "estimates of the number of Guiana Amerindians today varies between 9,000 and 12,000 individuals".[7]

Today, six main indigenous peoples are present on Guianese territory and self-identify as such, by virtue of the fundamental right to self-identification:[8] Lokono, Pahikweneh, Teko, Téleuyu (called Kali'na), Wayampi and Wayana. However, other indigenous peoples are also present, although they may be more marginalised and not recognized by society, as is the case of the Apalaï, who live together, for example, with the Wayana.

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[1] *Cf. Amérindiens de Guyane*. IWGIA (International Work Group for Indigenous Affairs), available at http://www.gitpa.org/Peuple%20GITPA%20500/gitpa500-2-GUYANEfiche.pdf.

[2] Tiouka, Alexis. "Droits collectifs des peuples autochtones: le cas des Amérindiens de Guyane française" [Collective Rights of Indigenous Peoples: The Case of the Amerindians of French Guiana], in I. Schulte-Tenckhoff, *Altérité et droit, contributions à l'étude du rapport entre droit et culture* [Otherness and Law: Contributions to the Study of the Relationship between Law and Culture], Coll. "Droits, territoires, cultures" [Rights, territories, cultures], No. 2, Brussels, Bruylant, 2002, pp. 241-262.

[3] *Cf.* Research Project of Stéphanie Guyon, SOGIP, http://www.sogip.ehess.fr/spip.php?rubrique43#.

[4] *Ibid*.

[5] *Cf. El Mundo Indígena 2014* [The Indigenous World 2014], IWGIA, Copenhagen, 2014, 624 p., spec. p. 151.

[6] Tiouka, Alexis. "Droits collectifs des peuples autochtones: le cas des Amérindiens de Guyane française" [Collective Rights of Indigenous Peoples: The Case of the Amerindians of French Guiana], *op. cit.*, pp. 241-262.

[7] *Mémento sur la situation des Peuples autochtones de Guyane française* [Handbook on the Situation of the Indigenous Peoples of French Guiana], Association Oka'mag – updated in 2010, 18 p., spec. p. 3.

[8] Fundamental principle recognised by CERD as well as by the United Nations Special Rapporteur on the Rights of Indigenous Peoples (E/CN.4/2002/97, para. 100), the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC/INF/OP/I(2003)003, para. 9), and also the United Nations Declaration on the Rights of Indigenous Peoples (paras. 9 and 33).

Aside from indigenous peoples, peoples referred to as *local communities*, *Noirs-marrons* or *Bushinengue* also live on Guianese soil. We refer here to peoples called *tribal* in international law. (In this sense, the International Labour Organization (ILO) distinguishes indigenous peoples from *tribal*[9] peoples, and the bodies of the Inter-American human rights protection system have adopted this terminology, particularly with regard to the Ndjuka or Saramaka peoples, who have been divided by the border between Suriname and Guiana. However, the peoples referred to as *tribal* share with indigenous peoples all elements of the definition except for the precedence of the latter's occupation of a territory prior to colonisation. Tribal peoples thus benefit in international law from the same differentiated rights as indigenous peoples, and including the right to traditional territory, since the relationship between an indigenous community and its territory is similar to that existing between a *tribal* community and its territory.[10] These two realities require special protection measures that guarantee the full exercise of their rights in accordance with their traditions and customs.[11]) In Guiana, this involves the Aluku, Ndjuka, Paramaka and Saramaka peoples, whose ancestors were African slaves taken by force in the region during European colonization in the 17th Century, and who fled the plantations of Dutch Guiana and took refuge in the forest (with some settling in Guiana during the 18th and 19th Centuries).

The years 1964 and 1969 "are crucial milestones for the Amerindians and *marrons* of French Guiana since they mark a step in their assimilation to French society. Indeed, since that time France has conducted a campaign of 'francisation' of indigenous communities".[12] Guiana became a French Overseas Department through the 1946 departmentalization law, and the Guianese territory was reorganised in 1969 with the creation of municipalities in the former territory of Inini (which affected the territories of three indigenous peoples of Guiana (Wayana, Wayampi and Teko) and "which opened the entire territory to a single administrative system"[13]). Furthermore, "schools and clinics were opened in the following years with the stated intention to merge and stabilise these highly unstable populations" .[14]

[9] Tribal peoples are those "whose social, cultural and economic conditions distinguish them from other sections of the national community, and … [who are] regulated wholly or partially by their own customs or traditions …": ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted in Geneva on 27 June 1989, Article 1(a). However, this terminological distinction in the ILO text is the result of pressure exerted by some newly independent States that, noting that the entire population on their territory is indigenous to the region, and "fearing for their relatively new national unity", would prefer to "impose the term *tribal* in order to challenge that of *indigenous*, insofar as the latter, in its historical dimension, could form the basis for separatist claims. In fact, the targeted groups would indeed be indigenous"; it is therefore a terminological distinction that has "a largely artificial nature": Rouland, Norbert, Pierre-Caps, Stéphane and Poumarede, Jacques. *Droit des minorités et des peuples autochtones* [Law of Minorities and Indigenous Peoples], Paris: Presses Universitaires de France, 1996, 581 p., spec. pp. 432-442.

[10] IAHR Court, Judgment of 15 June 2005, *Moiwana Village v. Suriname*, Series C No. 124, para. 131.

[11] As Mr. Rodríguez-Piñero explains, the reason for the inclusion of the term *tribal* is the desire to provide protection for particularly vulnerable groups against the dominant society. Indeed, faced with the arguments of several governments that *all are indigenous in their territories*, the intent of the ILO has been to pay particular attention to traditional societies that continue to live according to traditional ways of life: Rodríguez-Piñero Royo, Luis. *Indigenous Peoples, Postcolonialism, and International Law*: *The ILO Regime*, Oxford: Oxford University Press, 2005, 410 p., spec. pp. 160 and 161.

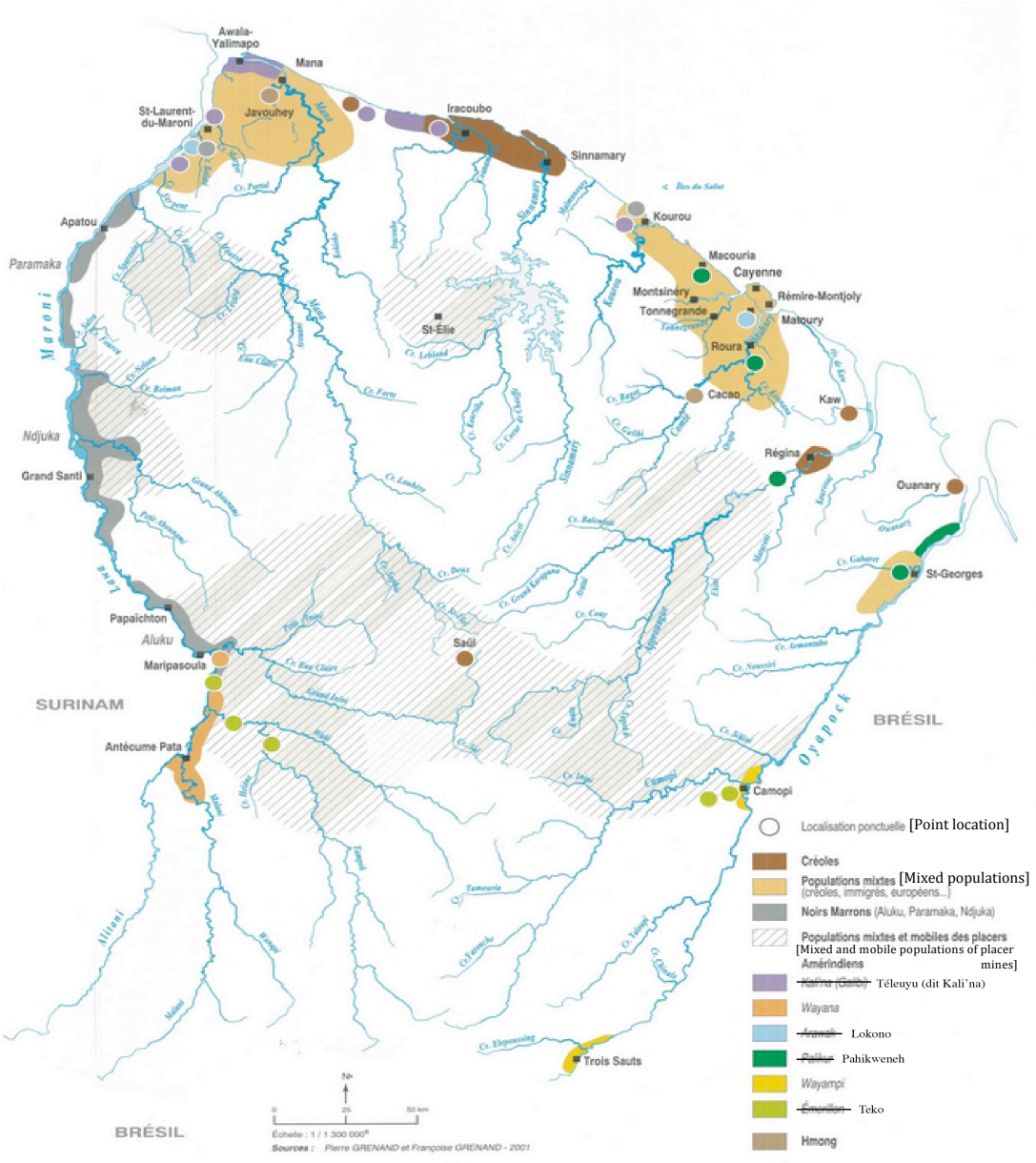
[12] *Zones de Droits d'Usage Collectifs, Concessions et Cessions en Guyane française: Bilan et perspectives 25 ans après* [Zones of Common Use Rights, Concessions and Transfers in French Guiana: Bilan and the Prospects 25 years Later]. Davy, Damien and Filoche, Geoffroy (Dir.). Cayenne, 2014, 166 p., spec. p. 17.

[13] *Mémento sur la situation des Peuples autochtones de Guyane française* [Handbook on the Situation of the Indigenous Peoples of French Guiana], *op. cit.*, p. 6.

[14] *Zones de Droits d'Usage Collectifs, Concessions et Cessions en Guyane française : Bilan et perspectives 25 ans après* [Zones of Common Use Rights, Concessions and Transfers in French Guiana: Bilan and the Prospects 25 years Later], *op. cit.*, p. 17.

From a territorial point of view, in Guiana the indigenous coastal peoples (Kali'na, Lokono and Pahikweneh, represented by the areas in purple, blue and dark green, respectively, on the map below) are generally distinguished from those of the interior (Wayana and Apalaï, Teko and Wayampi, represented by the areas in orange, light green and yellow, respectively). The peoples referred to as *Noirs-marrons*, *Bushinengue* or *local communities* (shown in grey on the map) are located along the border with Suriname.

Regardless of the geographical area in which they live, these peoples have maintained a lifestyle based on subsistence activities: hunting, fishing and agriculture. Those living in coastal areas have been particularly westernised, but they maintain close links with their culture of origin.[15]



Source: Pierre Grenand and Françoise Grenand – 2001
(The indicated name changes of certain peoples were made by the authors of this report.)

[15] *Cf. El Mundo Indígena 2014* [The Indigenous World 2014], *op. cit.*, p. 151.

1.2 Zones of Common Use Rights, concessions and transfers of the Guyanese territory

A decree published on April 14, 1987 recognized to the "communities who traditionally derive their livelihood from the forest" the possibility of being granted Zones of Common Use Rights (ZCUR) on areas that they use "for hunting, fishing, and each overall activity necessary to the subsistence of these communities." The decree also provided for the possibility of collectively obtaining concessions or transfers of State land, for creation or development of villages.

On March 9, 1992, the first Zone of Common Use Right was allocated; "[f]or more than twenty-five years, fifteen ZCUR, nine concessions and three collective transfers were created by *arrêté préfectoral* [Prefectorial order]," in areas that cover 8% of the Guyanese Region. [16] In 2013, the *Observatoire hommes milieux (OHM) Oyapock* [Human-Environment Observatory of Oyapock] of the *Centre national de la recherché scientifique (CNRS)* [National Center for Scientific Research] conducted a study and established an inventory of the 15 Zones of Common Use Rights, 9 concessions and 3 transfers currently granted. The OHM reported that "certain villages do not benefit from the ZCUR nor from concessions. This is the case of the Kali'na of the municipalities of Mana and Iracoubo, of the Palikur of Régina and Saint-Georges of Oyapock. Regarding the *Noirs-marrons* [Maroon blacks], only the Ndjuka of Saint-Jean and the Aluku of Maripasoula hold a ZCUR." [17]

Furthermore, several critiques are levelled at this system. The decree enforcement is subject to the agreement of the municipalities where territories in question are located. In addition, a veto from the local elected committee on land allocation is sufficient to block the process and refuse to grant common use right (for example, there are only three transfers; "anywhere else, local elected officials are opposed to it" [18]). Moreover, there are incoherencies between the Prefectorial orders and the regulation, and between the Prefectorial orders themselves (for example, Article 6 of the Order 1262 for the benefit of the Ndjuka people mentions "the Amerindian habitat"). In addition, certain orders set restrictions to activities that are not contained in other orders. Some of the wording of these orders, tainted of paternalism, are out-dated. Furthermore, the concept of subsistence is broader than hunting, fishing and harvesting; yet these orders generally limit the concept to these three activities, or the concept of subsistence varies between Prefectorial authorities, or varies according to the context. On the other hand, the management (community or National Forestry Office) is not clear. The legal nature of a *community* is not defined. Finally, there is a lack of precision in the statutes of these zones.[19]

Although this will be developed in the section on the violation of property rights, "we are still far from a true recognition of the rights of indigenous peoples by the French State." [20] Indeed,

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[16] *Cfr. Zones de Droits d'Usage Collectifs, Concessions et Cessions en Guyane française : Bilan et perspectives 25 ans après*, op. cit. [Zones of Common Use Rights, Concessions and Transfers in French Guiana: Assessment and Perspectives 25 years later, op cit.] pp. 13 et 23.

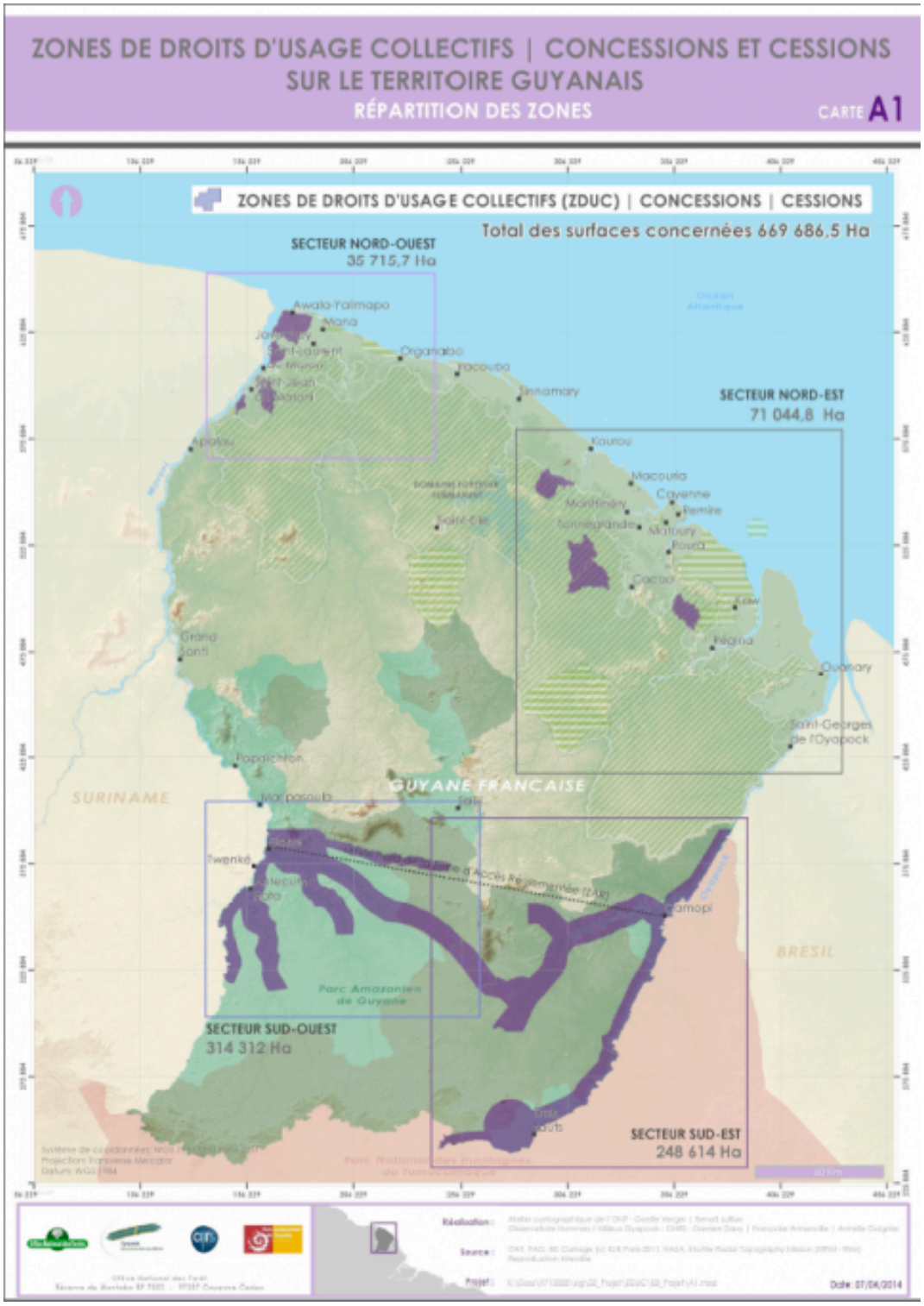
[17] *Zones de Droits d'Usage Collectifs, Concessions et Cessions en Guyane française : Bilan et perspectives 25 ans après*, op. cit., [Zones of Common Use Rights, Concessions and Transfers in French Guiana: Assessment and Perspectives 25 years later, op cit.] p. 72.

[18] Research project by Stéphanie Guyon, SOGIP, http://www.sogip.ehess.fr/spip.php?rubrique43#.

[19] *Cfr.* Tritsch, Isabelle, 2013, Dynamiques territoriales et revendications identitaires des Amérindiens wayãpi et teko de la commune de Camopi (Guyane française), [Dynamic Territories and Identity Claims of the wayãpi and teko Amerindians of the Camopi commune (French Guiana)], geography thesis, University of Antilles-Guiana, 438 p, p. 261. Available online at https://tel.archives-ouvertes.fr/tel-00831619/document (in French).

[20] TIOUKA, Alexis. « Droits collectifs des peuples autochtones : le cas des Amérindiens de Guyane française », *op. cit.*, ["Collective rights of indigenous peoples: the case of Ameridians in French Guiana," op. cit.] pp. 241-262.

the communities demand to have and exercise a power of decision over their own destiny, in accordance with their fundamental rights, in order to control their destiny and their territory.



Title: Zones of Common Use Rights: Concessions and Transfers of Guyanese Territory: Zones distribution

Source: Davy Damien and Filoche Geoffroy, 2014.
"An atlas of Zones of Common Use Rights in Guiana," Confins [online], http://confins.revues.org/9688

2. Violations of the Convention to the Detriment of Indigenous Peoples and Local Communities (*Tribal* Peoples, *Bushinengue* or *Noirs-Marrons*) in Guiana

2.1 Violation by France of Article 1 of the Convention

In its report, France does not make a specific comment in terms of compliance with Article 1 of Convention. However, France's position with regard to indigenous peoples and local communities (*Tribal* Peoples, *Bushinengue*, and *Noirs-Marrons*) is in itself a breach of Article 1. As a matter of fact, the French State discriminates against these peoples by adopting an erroneous interpretation of the principles of equality and non-discrimination, and thus by refusing to recognize their inherent fundamental rights (2.1.1). In addition, non-recognition of the right to traditional territory constitutes a discrimination of property right (2.1.2).

2.1.1 Discrimination Due to an Erroneous Interpretation of the Law

Human rights recognized at international level must be understood independently of national legal terms, or independently of interpretations made by bodies of States. Yet, in France, indigenous people are unable to enjoy their *differentiated* rights (2.1.1.2) because France misinterprets the principles of equality and non-discrimination (2.1.1.1). The country also refuses to establish statistical data (2.1.1.3).

2.1.1.1 Erroneous Interpretation of the Principles of Equality and Non-Discrimination

In its decision n° 99-412 of 15 June 15 1999, the French Constitutional Council stated that in the light of the principles of indivisibility of the Republic, equality under the law, and unity of the French people, "no collective rights can be recognised as inhering in any group defined by community of origin, culture, language or belief. Thus, France has already affirmed in its report submitted in 2009 that it "does not recognize the existence within its territory of minorities with a legal status as such, and takes the view that the application of human rights to all of a State's citizens, on the basis of equality and non-discrimination, normally provides them with the full and complete protection to which they are entitled, whatever their situation."[21] In consequence, according to the French position, the "principles of the equality of citizens and the unity of the "French nation", set out in the Constitution, preclude the recognition of collective rights that are conferred on a group by reason of the community they form."[22] France reiterates this affirmation in the report reviewed at the 86th session.[23] Furthermore, according to the French interpretation of the principle of equality, a

> basing of the legal context on the equality of all citizens guarantees observance of the principle of non-discrimination throughout the territory of the Republic and thereby equality of treatment for all without distinction of origin. In practice it enables everyone, whether or not they consider themselves to belong to one group or several, to exercise

[21] Reports submitted by States parties under article 9 of the Convention, France, CERD/C/FRA/17-19, May 22, 2009, § 9.
[22] *Ibid.*, § 132.
[23] *Cfr.* Reports submitted by States parties under article 9 of the Convention**,** France, CERD/C/FRA/20-21, October 25, 2013, § 7.

> their rights and freedoms without suffering discrimination in connection with their identity.[24]

In consequence, France considers that taking into account the aspirations of indigenous peoples would involve "the establishment of separate legal regimes between citizens, which would create different categories of citizens with different rights. (That) is prohibited, and collective rights can not take precedence over individual rights." [25]

Yet, since 1935, the concept of equality is interpreted differently in international law. Indeed, in a well-known advisory opinion, the Permanent Court of International Justice established that "equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations. It is easy to imagine cases in which equality of treatment of the majority and of the minority, whose situation and requirements are different, would result in inequality." [26]

Thus, putting aside the French position, the CERD has already refuted and ignored arguments of States that contend that equality means identical treatment for all groups of people. In this sense, a

> differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of article 1, paragraph 4, of the Convention. In considering the criteria that may have been employed, the Committee will acknowledge that particular actions may have varied purposes. In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin. [27]

Similarly, the Committee is concerned "that the State party's objective to build a nation based on the principle of equality for all has been implemented in a way detrimental to the protection of ethnic and cultural diversity," recalling that "the principle of non-discrimination requires that the cultural characteristics of ethnic groups be taken into consideration."[28]

Thus, the French State's interpretation is contrary to Article 1, paragraph 4, of the Convention, which states that the "special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination."

Finally, it is worth noting that, according to Georges Scelle, to be strictly positivist "*c'est faire du droit comme les médecins de Molière faisaient de la medicine*" ["is to practice law as

[24] *Ibid.*, § 55.
[25] *Ibid*, § 102. In the same vein, see the response of Foreign Affairs and Human Rights Secretary of State to the written question regarding the delay within which France could "engage in the long-awaited ratification by the people of Guiana and New Caledonia ratification of the Convention 169 of the ILO": http://www.senat.fr/basile/visio.do?id=qSEQ081006034.
[26] Permanent Court of International Justice, advisory opinion of April 6, 1935, *Minority Schools in Albania*, p. 19.
[27] CERD, General Recommendation 14, *Definition of Racial Discrimination,* (Forty-second session, 1993), U.N. Doc. A/48/18, § 2.
[28] Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Botswana, CERD/C/BWA/CO/16, April 4, 2006, § 9. In the same sense, see Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Democratic Republic of the Congo, CERD/C/COD/CO/15, August 17, 2007, § 14.

Molière's doctors practiced medicine."][29] "(M)eaning of this comparison is not very clear but the pejorative connotation is evident." [30]

2.1.1.2 The Refusal to Recognize Inherent *Differentiated* Rights

While the recognition and protection of the rights of indigenous peoples is not only a legitimate objective, but, above all, a requirement of the Convention pursuant to General Recommendation 23, France admits that "the concept of specific recognised rights of indigenous and local communities is alien to French law".[31]

However, it is essential to interpret "classic" individual rights in the light of indigenous specificities, in a way that those rights may be meaningful for these peoples and so that they may actually be implemented. In fact, the first United Nations Special Rapporteur on the Rights of Indigenous Peoples explains that the United Nations Declaration in this area is like the lens through which all the other international instruments may be read: the recognition of differentiated rights, therefore, does not involve the creation of new rights for the benefit of these peoples that would prevail over the rights of the majority, but – simply – the interpretation, in the light of specificities, of existing rights in order to achieve their effectiveness. Indeed, in order for fundamental rights to be meaningful, they need to be interpreted in a way that is differentiated in accordance with the beneficiaries:

> … the States must ensure, on an equal basis, full exercise and enjoyment of the rights of these individuals … subject to their jurisdiction. However, it is necessary to emphasize that to effectively ensure those rights, when they interpret and apply their domestic legislation, the States must take into account the specific characteristics that differentiate the members of the indigenous peoples from the general population and that constitute their cultural identity.[32]

Thus, for example, while the "forced introduction of the notions of property rights stemming from Roman law … involved an extensive process that plundered and dispersed the communities …",[33] today, the reading of the fundamental right to property for the benefit of members of traditional societies entails a different meaning in international human rights law than it does in civil law. It is necessary to keep in mind that it is a different concept, one whose key is the nature *sui generis* of the relationship that members of traditional societies have with their territories,[34] and that this concept is different and broader than that of *classic* property since it is connected with the collective right to survival as a people. Thus,

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[29] Taken from KELSEN, Hans. *Controverses sur la théorie pure du droit. Remarques critiques sur Georges Scelle et Michel Virally* [Controversies on the pure legal theory. Critical remarks on Georges Scelle and Michel Virally], Paris : Editions Panthéon Assas, 2005, 186 p., specifically p. 10

[30] LEBEN, Charles. Foreward. KELSEN, Hans. *Controverses sur la théorie pure du droit. Remarques critiques sur Georges Scelle et Michel Virally* [Controversies on the pure legal theory. Critical remarks on Georges Scelle and Michel Virally], *op.cit.,* p. 10, note on bottom of page n° 4.

[31] Reports submitted by States Parties under Article 9 of the Convention, France, CERD/C/FRA/17-19, 22 May 2009, para. 133.

[32] IADH Court, Judgment of June 17, 2005, *Yakye Axa Indigenous Community v. Paraguay*, Series C No. 125, para. 51.

[33] Separate Opinion of Judge Sergio García-Ramírez in the Judgment Rendered by the IAHR Court on March 29, 2006, *Sawhoyamaxa Indigenous Community v. Paraguay*, Series C No. 146, para. 13.

[34] *Cf.* Separate Opinion of Judge Sergio García-Ramírez in the Judgment Rendered by the IAHR Court on August 31, 2001, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Series C No. 79, para. 13, and Separate Opinion of Judge Sergio García-Ramírez in the Judgment Rendered by the IAHR Court on June 23, 2005, *YATAMA v. Nicaragua*, Series C No. 127, para. 18.

> [w]hen property is mentioned in connection with the rights vested in the members of the indigenous communities or the communities as such over certain lands —to which they furthermore attach traditions, traditions and beliefs, spiritual relations that transcend the mere possession and economic enjoyment— the meaning labelled should not necessarily be confused with the absolute ownership that is characteristic of ordinary civil law. The property rights of the indigenous people are different —and so it must be recognized and protected— from this other form of ownership created by the European law….[35]

These *inherent* rights are not born out of recognition from States, from the United Nations or even from international human rights protection tribunals; these rights are not *granted* by States, international norms, or even human rights protection bodies. They are *pre-existing* rights (violated during the conquest), which have been recognized by international law.[36] It is about "mak[ing] operative the previously existing rights of the indigenous communities, who have exercised them historically and not since they acquired legal status."[37] As the ILO indicates, indigenous peoples' rights to lands are based "on the traditional occupation and use and not on eventual legal recognition or registration of that ownership by the States"; thus, "traditional occupation confers a right to the land, whether or not such a right was recognized by the State."[38] According to other experts, "indigenous rights are human rights that have always existed despite the ignorance of all other legal systems," they exist even if they are inexistent for States who "claim to have a monopoly on defining rights."[39] Thus, the land rights of traditional societies exist "without the State Acts under which they are provided,"[40] and enforcing them "is not an act of free will and discretion of States, but an obligation."[41]

It is therefore national legislations that should adapt themselves, and not the opposite[42], as differentiated rights of indigenous peoples apply on States, whose constitutions do not have anymore the last word. As explained by International Court of Justice judge Cançado Trindade, "(n)o State can consider itself above law standards that benefit to human beings who are the final holder; in short, State only exists for human being and not the opposite"[43].

Thus, it is the French legislation which must be revised so as to integrate the recognition of the rights of these peoples, rather than forcing indigenous peoples to function within the limits of what French legislation allows.

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[35] Separate Opinion of Judge Sergio García-Ramírez in the Judgment Rendered by the IAHR Court on March 29, 2006, *Sawhoyamaxa Indigenous Community v. Paraguay*, Series C No. 146, para. 13.
[36] *Cfr*. Separate Opinion of GARCÍA RAMÍREZ, Sergio, regarding the judgement of the I/A Court H.R. of 19 November 2004, *Massacre de Plan de Sánchez v. Guatemala*, Series C, No. 116, § 12.
[37] I/A Court H.R., judgement of 17 June 2005, *Yakye Axa Indigenous Community v. Paraguay*, Series C, No. 125, § 82. In the same vein, see article 14.1 of ILO Convention No. 169, or article 26 of the United Nations Declaration on the Rights of Indigenous Peoples.
[38] ILO, Programme to Promote ILO Convention No. 169 (PRO 169). *Indigenous and Tribal People's Rights in Practice: A Guide to ILO Convention No. 169,* Geneva, 2009, 200 p., spec. p. 94.
[39] CLAVERO, Bartolomé. "El derecho indígena entre el derecho constitucional y el derecho interamericano, Venezuela y Awas Tingni", *Revista I.I.D.H*., vol. 39, 2004, p. 257 à 292, spec. pp. 257 and 283.
[40] I/A Court H.R., judgement of 31 August 2001, *Case of Awas Tingni Indigenous Community v. Nicaragua*, Series C, No. 79, § 140.a.
[41] Commission IADH, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*, [online], OEA/Ser.L/V/II., Doc. 56/09, 30 December 2009, available at http://cidh.org/countryrep/Indigenous-Lands09/TOC.htm, § 82.
[42] NASH ROJAS, Claudio. « Los derechos humanos de los indígenas en la jurisprudencia de la Corte Interamericana de Derechos Humanos », in AYLWIN, José (Dir), Derechos Humanos y Pueblos Indígenas. Tendencias internacionales y contexto chileno, Temuco : Instituto de Estudios Internacionales, Universidad de la Frontera, 2004, 460 p, pp. 15 à 26, spéc. p. 36.
[43] CANÇADO TRINDADE, Antonio Augusto. « Le déracinement et la protection des migrants dans le droit international des droits de l'homme », R.T.D.H., n° 74, avril 2008, pp. 289 à 328, spéc. pp. 291 et 292.

2.1.1.3 The Refusal to Establish Statistical Data

While the Committee reaffirmed in its last General Observations regarding France that "the objective of the gathering of statistical data is to enable the member states to identify and to have a better knowledge of the ethnic groups living in their territories, of the types of discriminations that these groups are or can be victims of, to provide answers and solutions adapted to the identified forms of discrimination and, lastly, to measure the progress made,"[44] and that the Committee recommended to France to proceed "with a census of its population based on a strictly voluntary and anonymous individual ethnic or racial self-identification,"[45] no change has been observed in France's position.

In fact, "in the French conception, the affirmation of one's identity is the result of a personal choice, not of criteria defining a priori a given group and out of which would derive a distinct legal regime. Such an approach protects both the right of each individual to identify with a cultural, historical, religious or philosophical tradition and that to refuse that tradition."[46] France also reaffirms that, in

> application of Article I of the Constitution, according to which the Republic "ensures equality of all citizens before the law without distinction of origin, race or religion," the Constitutional Council has ruled that "the treatments that are necessary to conduct studies on measuring people's diversity of origins, discrimination and integration can rely on objective data. However, they may not, without ignoring the principle enunciated by Article I of the Constitution, be based on ethnic or racial origin" (decision of the Constitutional Council no. 2007-557 DC of November 15, 2007). This open stance has received broad consensus among the civil society. Thus, the National Consultative Commission on Human Rights stands against the implementation of any ethno-racial references, even when they aim to combat discrimination. The National Consultative Commission on Human Rights proposes nonetheless that quantitative tools enabling the improvement of the implementation of the right to non-discrimination be put in place (opinion of March 22, 2012).[47]

2.1.2 The Particular Issue of Discrimination Due to the Non-Recognition of the Right of Collective Property

The collective right to traditional territory is not recognized to indigenous peoples and local communities (*Tribal* peoples, *Bushinengue*, or *Noirs-Marrons*) in Guiana. These communities are considered by the French State as minorities rather than as peoples. In this sense, France, using elements from the definition of minorities, states that "the French position does not exclude the right of overseas indigenous populations to share, with the other members of their group, their own cultural life, to practice their own religion, or to speak their own language."[48]

Yet, as Mrs. Erica-Irene Daes has explained, "the main legal distinction between the rights of minorities and indigenous peoples in contemporary international law concerns internal self-determination, namely, the right of a group to be autonomous within a recognized geographical

[44] Examen des rapports présentés par les États parties conformément à l'article 9 de la Convention, Observations finales du Comité pour l'élimination de la discrimination raciale, France, CERD/C/FRA/CO/17-19, du 23 septembre 2010, § 12.
[45] *Ibid*, § 12.
[46] [46] Reports submitted by the relevant member-states in accordance with Article 9 of the Convention, France, CERD/C/FRA/20-21, October 25, 2013, § 9.
[47] *Ibid.,* § 10.
[48] *Ibid.*, § 108.

area, without intervention by the State."[49] Similarly, "if the Declaration on minorities stresses first and foremost the effective participation in the overall society of which a minority is part […], the objective of the provisions relating to indigenous peoples is to devolve power for the benefit of these peoples in order to allow them to make their own decisions."[50]

Given the lack of recognition of the right to collective property, it is appropriate to highlight that for Expert James Anaya, the non-discrimination norm implies the recognition of the type of property derived from the customary patterns of indigenous peoples "independently from the modalities of property created by the dominant society."[51] Similarly, indigenous people's conception of landed property does not "necessarily match the classical conception of property, yet equally deserves protection" of the fundamental right to property; for that reason, "to deny recognition to specific versions of the right to the use or enjoyment of property, created by every people's culture, traditions, customs and beliefs, would amount to affirm that there exists only one way to make use of property, which would render obsolete to millions of people" the protection of norms aiming at guaranteeing the right to property.[52]

Therefore, the absence of appropriate legislation on this topic in France must be recognized as a violation of Article I of the Constitution.

2.2 Violation by France of Article 5 of the Convention

Article 5 of the Convention protects the right to move freely. Yet, because of the creation of borders between Guiana and Suriname, the members of indigenous and tribal peoples found themselves scattered and they cannot come to terms with the idea of requesting a visa to justify their movements. In this sense, the United Nations Declaration on the Rights of Indigenous Peoples indicates, in Article 35, that "Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders"; thus, "States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right." Moreover, Article 5 of the Convention protects the right to citizenship. Yet, in Guiana, indigenous peoples and local communities (tribal peoples) have a hard time obtaining birth certificates. Still, it seems important to focus in this section on three others violations of the Convention: the violation of the right to property (2.2.1), the violation of the right to health (2.2.2) and the violation of the right to education (2.2.3).

2.2.1 Violation of the Right to Property

2.2.1.1 Recognition of Usage Rights But Denial of the Right to Traditional Territory

While the majority of States has revised their legislation so as to recognize the right to traditional territory (a right which recognizes not only *possession* of a piece of land, but also its *property*, implying for States the obligations to delimit, demarcate and issue a collective

[49] DAES, Erika-Irene and EIDE, Asbjørn. *Document de travail sur le lien et la distinction entre les droits des personnes appartenant à des minorités et ceux des peuples autochtones* [en ligne], 19 juillet 2000, E/CN.4/Sub.2/2000/10, § 43.
[50] *Ibid.*, § 8.
[51] ANAYA, James. *Los pueblos indígenas en el derecho internacional*, Madrid : Ed. Trotta, 2005, 493 p., esp. p. 204.
[52] Cour IADH, ordinance of March 29, 2006, *Communauté autochtone Sawhoyamaxa c. Paraguay*, Série C, n° 146, § 120.

property title, and implying for indigenous peoples a certain amount of autonomy on said territory), France remains attached to the conception which predominated during colonization. Indeed, despite the fact that the doctrine of *terra nullius* has been proscribed by the International Court of Justice in its advisory opinion on Western Sahara, in France, "according to the doctrine of *terra nullius*, the land tenure system of the State [still] encompasses any land left vacant or without an owner, woods and forests, which amounts to nearly every land in Guiana."[53]

Indeed, although an ordinance was signed on April 14, 1987 enabling the creation of Zones of Collective Usage Rights, concessions and sales on Guiana's trust lands (as presented above), several complaints have been made as to the very organization of this system. Furthermore, the main complain has to do with the fact that this provision only establishes a basic *usufruct* right to the lands but does not provide the guarantee of a legal recognition of the *fundamental right to property*. Therefore, the indigenous and tribal peoples of Guiana "are not owners of their lands, and are merely tolerated on the State's lands"[54] since these territories are classified as private land belonging to the States or the territorial authorities. As a consequence, the rights of communities over natural resources are not recognized either since, as certain ordinances indicate, "deforestation practices as well as any logging must receive a prior authorization from the National Forest Office."[55]

There exist several illustrations of the limits to, or of the absence of real right over these territories. For example, in order to obtain a concession, the communities must have been organized into associations (law of 1901), into societies or into another legal person, which contradicts their traditional forms of political organization. Moreover, the concessionary associations commit to "allocate buildings located on trust lands, which are the objects of the concession, for housing and agriculture. The transferred buildings must be allocated as stated above, or they will be revoked."[56] Moreover, concessions are provided for a limited duration determined by each order: one year, five years or ten years, for example.[57] They are renewable "but are not subject to tacit renewal."

As a consequence, when each concession expires, the communities must either request for it to be renewed or be made permanent, or [communities] will be considered as occupying public land to which they hold no title."[58] On this point,

> the permanence of the rights is rather weak: it us up to the public authorities to determine if its enhancement is properly conducted, and they do it with a large margin of discretion while appreciating criterias, which are rather vague in their application. On the one hand, obligations of the concession holder may have been very broadly defined by the act of concession. On the other hand, the very notion of "enhancement" depends on the public

[53] Research project by Stéphanie Guyon, SOGIP, http://www.sogip.ehess.fr/spip.php?rubrique43#.
[54] Brigitte Wyngaarde. Parc national de Guyane française : un projet d'assimilation ? Atelier Territoires, Environnement, Ressources : 1er Congrès des Peuples Autochtones Francophones, Agadir – 2-6 novembre 2006. Disponible sur http://www.gitpa.org/Dvd/pj/GUYANE/GUYC1_1.pdf.
[55] *Zones de Droits d'Usage Collectifs, Concessions et Cessions en Guyane française : Bilan et perspectives 25 ans après*, op. cit., pp. 28 and 31.
[56] For example, *Concession au profit de l'association Wapo Naka*, *Concession des parcelles 13 et 14 de la section BE au profit de l'association de la communauté Bosh (Ndjuka) de Saint-Jean du Maroni*, *Concession de la parcelle 1453 section F au profit de l'association T°leuyu*, *Concession de la parcelle 1459 section F au profit de l'association* Papakaï, or *Concession de la parcelle AK242 à Macouria au profit de l'association Payikwene* : Zones *de Droits d'Usage Collectifs, Concessions et Cessions en Guyane française : Bilan et perspectives 25 ans après*, op. cit., pp. 29, 34, 36, 39 and 44.
[57] *Ibid.,* pp. 29, 33, 39 and 44.
[58] *Ibid.,* p. 101.

authorities' understanding of a fundamental characteristic of traditional farming systems: itinerancy.[59]

What has also been the subject of criticism is the nature of the concessions as instruments of "political and administrative control" or as aiming to "settle in one place the populations."[60]

Similarly, regarding transfers, failure to respect the conditions within which the property transfer is agreed, leads to their resolution. Besides, it is important to note that "this right establishes no limit to the fragmentation of land (division of land plots and attribution of individual rights to these plots), and it does not prevent the sale of these plots to people not belonging to the community."[61]

Thus, faced with the absence of property rights for these peoples (over lands as well as over natural resources, in contradiction with international law), there exist many conflicts, due to private activities as well as to State activities. For example, the prefect of Guiana decided in August 2005 to transfer 4 plots to a mining company (CBJ CAIMAN) despite the fact that the Pahikzeneh indigenous people from the Favard village held a use right to the land. The development of the plot would have required its deforestation, which would have prevented the practice of traditional activities. It is only after broad mobilization that the project was withdrawn.[62] Moreover, members of these peoples who had "taken plants and game were fined."[63] Similarly, the "villages of Sainte-Rose in Lima and of Cécilia had their own fishing area on Mount Grand Matoury in which, since the creation of the reserve, any taking has been prohibited. The population requests that a fishing period of two months, outside the laying season as well as the spawning season, be authorized. The regulation of the reserve does not currently allow for such an arrangement.[64]

Furthermore, examples of conflicts involving private parties are numerous. Indeed, there are many illegal habitats as well as many thefts of wood in several areas.[65] Moreover, in the *Zone of Collective Use Rights for the benefit of the Pahikweneh community of the Yapara Village*, "the settlement of undesirable families who do not belong to the community is a significant problem for this village. A lawsuit is pending."[66]

Within the *Concession for the benefit of the Wapo Naka association*, "a part of the village as well as the school and half of the stadium were built on private property. Hence there is a land dispute between the concession and the private land that borders it"[67]. Illegal gold mining is also creating conflicts[68].

The Committee has already expressed its concern about laws that do not recognize the "rights of ownership and possession of indigenous communities over the lands which they traditionally occupy,"[69] or when "the land rights [of an indigenous people] have not been satisfactorily settled

[59] *Zones de Droits d'Usage Collectifs, Concessions et Cessions en Guyane française : Bilan et perspectives 25 ans après*, *op. cit.,* p. 101.
[60] *Ibid.*, p. 100.
[61] *Ibid.*, p. 123.
[62] *Cfr. Mémento sur la situation des Peuples autochtones de Guyane française*, *op. cit.,* p. 10 and 11.
[63] *Zones de Droits d'Usage Collectifs, Concessions et Cessions en Guyane française : Bilan et perspectives 25 ans après*, *op. cit.,* p. 86.
[64] *Ibid.,* p. 86.
[65] *Ibid.,* pp. 25, 29 and 31.
[66] *Ibid.,* p. 43.
[67] *Ibid.,* p. 30.
[68] *Ibid.,* pp. 38, 57 et 65.
[69] The examination of States party reports under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Guyana, CERD/C/GUY/CO/14, of 4 April 2006, § 16.

and that various projects and activities, such as mining and logging, continue to be carried out in the traditional lands of [an indigenous people], without their prior, free and informed consent"[70]. There is no reason to have a different interpretation as far as France is concerned. In this sense, in its latest general Observations concerning France, the Committee expressed its concern for the non-recognition of "the collective rights of indigenous peoples, in particular the ancestral right to land"[71]. Thus, the Committee recommended that France "allow recognition of the collective rights of indigenous peoples, in particular with regard to property," and additionally recommended that France "take the necessary legislative measures to ratify the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169)."[72].

However, in the report submitted for consideration during the 86th session, France still advocates – misinterpreting fundamental rights – that

> ILO Convention No. 169 [on indigenous and tribal peoples] confers specific rights on a particular group by comparison with the rest of the population. France cannot ratify this Convention because of two constitutionally guaranteed fundamental principles: the principle of equality, which implies non-discrimination, and the principle of the unity and indivisibility, in terms of both territory and the population, of the Nation.[73]

Thus, in Guiana, "land tenure insecurity, the mother of all insecurities, is total: the first occupants of Guiana still do not own the land on which they live"[74]. According to some reports, "before, to built a village, you would choose a nice, rich piece of land with a lovely cove. At first, you would cut down some trees and then you would build your "carbet", a traditional Guyanese wooden hut. Then your family would come; we lived there and it was our village. Now it's complicated – the land belongs to the State, so we have to file applications, obtain legal documents, and you're still not sure you'll get something"[75].

However, this should not be a simple *privilege* to use this land, a simple right to usufruct which can be stopped by the State or which can compete with the property rights of third parties. Members of indigenous peoples and local communities (*tribal, Bushinengue* or *Noirs-Marrons* peoples) must have the right to obtain their territory's land title in order to ensure the permanent use and enjoyment of their land. Experts agree that the effectiveness of the right of indigenous peoples to own their traditional territories is *the* guarantee of all other fundamental rights. In fact, the Inter-American Court of Human Rights has come to the conclusion that "disregarding the ancestral right of the members of the indigenous communities to their territories could affect other basic rights, such as the right to cultural identity and to the very survival of the indigenous communities and their members"[76].

Thus, these fundamental, universal rights also apply to indigenous and tribal peoples of Guyana, because human rights are inherent to each individual and are not variable-geometry rights (not

[70] The examination of States party reports under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Finland, CERD/C/FIN/CO/20-22, of 23 October 2012, § 13.
[71] The examination of States party reports under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, France, CERD/C/FRA/CO/17-19, of 23 September 2010, § 18.
[72] Ibid.
[73] Reports submitted by States parties under article 9 of the Convention, France, CERD/C/FRA/20-21, of 25 October 2013, § 52.
[74] Brigitte Wyngaarde. Parc national de Guyane française : un projet d'assimilation ?, *op. cit*.
[75] *Zones de Droits d'Usage Collectifs, Concessions et Cessions en Guyane française : Bilan et perspectives 25 ans après*, *op. cit*., p. 73.
[76] Cour IADH, arrêt du 17 juin 2005, *Communauté autochtone Yakye Axa c. Paraguay*, Série C, n° 125, §§ 146 et 147.

legally binding for some States but not others, or benefit some communities but not all). In this sense, it is worth noting that "the territory of each of these peoples reaches well beyond the borders of the department. For example, the Kali'na territory covers the Guyana Plateau, stretching from Brazil to Venezuela"[77]. It would not be in line with international human rights law if it were possible to recognize the fundamental right to collective property elsewhere and deny it to applicable peoples in France, simply because the State of the territory in which they live (because of a colonization that they suffered) refuses to recognize their fundamental rights.

2.2.1.2 The Particular Issue of the Guiana Amazonian Park

Despite opposition from several Amerindians villages (Elahé, Kayodé, Taluhwen, Twenke, Antecume or Pilima on the Upper Maroni, for example)[78], Decree No. 2007- 266 of 27 February 2007 finally created a national park called the Guyana Amazonian Park (GAP). The *heart of the park*, defined as protected land and marine space, constitutes 2,030,000 hectares of old-growth forests in which mining activities are prohibited. This activity is allowed in the GAP's *free adhesion zone*, which is home to several communities that are now vulnerable to mining activity.

The creation of "protected areas" or national parks has been defined by experts as new and sophisticated ways of allowing States to deny indigenous peoples' rights, invoking reasons as pure as the protection of the environment[79]. In this case, in the GAP, classic environmental protection laws apply to indigenous and tribal peoples[80]. Thus, for example, those who live in these territories "regret the prohibition to hunt certain game birds (aras, for example), which are necessary for their feathered ornaments preparation"[81].

Regarding that issue, the Committee is concerned that "the various forestry and environment protection laws may have a discriminatory effect on ethnic groups living in forests"[82].

2.2.2 Violation of the Right to Health

After a sharp decline in illegal gold mining in 2008 and 2009 thanks to Operation Harpie, there has been a considerable upsurge in this activity since 2010, including more mining sites and deforestation. One of the major health problems in Guyana is caused by the consequences of mining activity and mercury contamination resulting from mining activities. As stated by *INSERM* (the French National Medical Research Institute) and *IVS* (French Institute for Public Health Surveillance), the pollution's effects are water pollution, the poisoning of aquatic wildlife, and the poisoning of the peoples whose livelihoods depend on the forest and the water. Thus, the direct impacts of methyl mercury (the most toxic form that causes irreversible damage to the nervous system) have been recognized (neurological and intellectual functions are

[77] TIOUKA, Alexis. « Droits collectifs des peuples autochtones : le cas des Amérindiens de Guyane française », *op. cit.*, pp. 241-262.
[78] *Cfr*. Brigitte Wyngaarde. Parc national de Guyane française : un projet d'assimilation ?, *op. cit*.
[79] *Cfr*. Expertise de Rodolfo Stavenhagen, dans Cour IADH, arrêt du 24 août 2010, *Communauté autochtone Xákmok Kásek c. Paraguay*, Série C, n° 214, § 169.
[80] *Cfr. Zones de Droits d'Usage Collectifs, Concessions et Cessions en Guyane française : Bilan et perspectives 25 ans après*, *op. cit*., p. 87.
[81] *Ibid.,* p. 60.
[82] The examination of States party reports under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Thailand, CERD/C/THA/CO/1-3, of 15 November 2012, § 16.

affected)[83]. Studies have revealed psychomotor delays in walking and in language acquisition among children, as well as alterations in visual and motor functions. Furthermore, intestinal diseases have caused the death of several babies. An abnormal number of neonatal malformations and miscarriages have been observed.

United Nations Rapporteurs on the situation of human rights and fundamental freedoms of indigenous peoples and on the right to food have drawn the State party's attention to studies that have revealed the levels of consumption of indigenous families that vastly exceed threshold considered tolerable by the World Health Organization. Similarly, among children under the age of 2, levels are 5 times greater than the norms set by the European Food Safety Authority (and 10 times higher than the global average).[84]

Furthermore, a second significant health problem in Guyana concerns the disproportionately high level of suicides among the indigenous peoples of the Upper Maroni; 13 times higher than the average rate in France[85]. The leading factors identified by experts are sedentary lifestyles, an inadequate educational system, mercury pollution of rivers, difficulties in accessing the health system, or insecurity due to illegal gold mining[86].

The Committee has expressed its concern regarding "inadequate access to social welfare and public services by certain ethnic groups because of language barriers and the limited availability of such services where these groups live," asking for the "improv[ement of] the enjoyment of economic and social rights by all ethnic groups, including by implementing special measures so as to speed up the achievement of equality in the enjoyment of human rights"[87].

2.2.3 Violation of the Right to Education

As Stéphanie Guyon indicates, “in the absence of ethnic statistics in French Guiana, it is difficult to understand the indigenous people’s specific situation from the point of view of access to […] education.” However, “with the small number of Amerindians that obtain the French baccalaureate and are able pursue higher education, a significant disparity seems to persist between indigenous and non-indigenous students in French Guiana in terms of access, continuation and success.”[88]

Not long ago, indigenous children were in French Guiana “removed from their families, considered orphans to be placed in Catholic homes in order to get an education.”[89] Thus, “the Pahikweneh and Lokono suffered the consequences of this assimilationist policy severely, to the

[83] *Cfr*. V. Laperche, R. Maury-Brachet, F. Blanchard, Y. Dominique, G. Durrieu, J.C. Massabuau, H. Bouillard, B. Joseph, P. Laporte, N. Mesmer-Dudons, V. Duflo et L. Callier (2007) : *Répartition régionale du mercure dans les sédiments et les poissons de six fleuves de Guyane,* Report BRGM/RP-55965-FR. September 2007, 201 p., spec. p. 17.
[84] Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya. Addendum Summary of cases transmitted to Governments and replies received. A/HRC/9/9/Add.1, §§ 235 and the following.
[85] *Cfr*. *El Mundo Indígena 2014*, *op. cit.,* p. 155.
[86] *Ibid.,* p. 156.
[87] The examination of States party reports under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Thailand, CERD/C/THA/CO/1-3, of 15 November 2012, § 17.
[88] Research project by Stéphanie Guyon, SOGIP, http://www.sogip.ehess.fr/spip.php?rubrique43#.
[89] TIOUKA, Alexis. *Adaptation du système éducatif dans un contexte pluriculturel et plurilingue*.1998, 26 p. spec. p. 7. Available at http://www.amazighnews.net/images/stories/ADAPTATION%20SYSTEME%20EDUCATIF.pdf.

point where there are very few speakers of their two languages today."[90] Therefore, "the education status of the Amerindian populations is very significant in the sense that it is the result of an assimilation policy from which the French State has not yet been able to break away."[91] According to Alexis Tiouka, "after having put them aside for a long time, the State adopted, after the departmentalisation, a more assimilationist attitude by making school mandatory and referring to national teaching programs, without trying to adapt to French Guiana's context."[92]

Difficulties accessing educational institutions in French Guiana are a factor in the educational failure of the indigenous peoples and local communities (*tribal* peoples). In fact, considering that a great majority of students live in the forest where the rivers are the only means of transportation, insufficient or inexistent transportation services hinder access to school. However, the main factor in the educational failure of members of the indigenous peoples and local communities in French Guiana seems to be the education system's inability to adapt to cultural diversity. The teaching is modelled on that of mainland France, thereby denying the culture of these peoples: there "is no specific indigenous education system and the French State does not recognize the right of French Guiana's Amerindians to be educated in their own language(s) and according to their own knowledge systems."[93] Indeed, "school is founded on the illusion that French is the mother tongue of the learners, like in mainland France. However, Amerindians have a different mother tongue."[94]

For instance, the indigenous peoples belong to three large Amazonian linguistic families: the Caribbean family (Kalina and Wayana), the Arawak family (Lokono and Pahikweneh), and the Tupi-guarani family (Teko and Wayampi)[95]. However, these are oral languages, "which makes the transition into writing difficult when starting school."[96]

However, according to UNESCO,

> Education in an unfamiliar language hampers EFA. Over the last four decades, evidence has accumulated suggesting that teaching learners in a language they do not understand is not very effective and causes a high incidence of repeating and dropout. One can safely assume that it affects access to education.[97]

In this respect, the Committee has already noted with concern in regard to another State "that some ethnic languages […] are at risk of disappearance" and, despite pilot projects announced by the State for the teaching of ethnic languages in schools, the Committee "remains concerned that many ethnic children have limited opportunities to learn their language", thus asking "to strengthen efforts to protect and conserve ethnic languages and to allocate resources for the promotion of the teaching ethnic languages in schools."[98]

[90] *Ibid.*, p. 6.
[91] *Ibid.*, p. 3.
[92] *Ibid.*, p. 6.
[93] *Ibid.*
[94] *Ibid.*, p. 2.
[95] *Ibid.*, p. 3.
[96] *Ibid.*, p. 3.
[97] World Education Forum, Dakar, 26 and 28 April 2000. Building social integration through bilingual and mother tongue education.
[98] Consideration of reports submitted by States parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Thailand, CERD/C/THA/CO/1-3, 15 November 2012, § 18.

In its report submitted to the Committee in 2009, France indicated that the French education system "accords full status to the regional languages, which may be studied by students in both metropolitan and overseas French on the same basis as."[99] The State indicated having made a list of the principal regional languages in French Guiana[100]. In the report being examined during the 86th session, France also indicates that

> While Article 2 of the Constitution defines French as the "language of the Republic", France pursues a policy of developing its regional languages, especially overseas. Since the latest report, France has held the Estates General of Multilingualism in Overseas France. This meeting, which took place in French Guiana from 14 to 18 December 2011, produced a set of new recommendations based on principles for possible inclusion in a charter on improving the rules and action for the protection of local languages.[101]

However, this is far from taking cultural diversity into account. An *Intervenant en Langues Maternelles* system was implemented, aiming to provide teaching in the children's mother tongue. However, it is far from bilingual intercultural education as the goal is simply to be a transition phase in mastering the French language.However, this system is "precarious; it was suspended several times. Bilingual mediators do not have a real status within the national education system and it only concerns a part of the Amerindian villages. Many villages located in coastal communities are not included, for example."[102] In the same vein, "these monitors have never had an actual position, or a specific budget for their pay; that is why when the budget no longer provided for their employment, the operation came to a halt."[103]

According to the response of the Ministry in charge of overseas to a question from a senator that drew attention to new indigenous suicides in French Guiana, action to take in the area of teaching would consist in adapting schools to the indigenous reality, which for the ministry means the "evolution of teaching pace and the teaching of Amerindian culture and know-how outside of school hours."[104] According to Brigitte Wyngaarde, customs chief of the village of Balaté: "how can we not be shocked by these pathetic decisions—placing Internet access points and interim psychologists, building a sports facility in Camopi. Evidently, the prefect of French Guiana has not realized the magnitude of the problem."[105] Cultural teaching will be done outside school hours, and it was not specified that it would be provided in indigenous languages. We are therefore once again far from a bilingual intercultural education that contributes, after decades of education aiming to assimilate, to the preservation of cultural identity. A reinterpretation of the French stance on the subject could be an element of solution to this complex crisis in French Guiana.

The Committee has already recommended that the State

> increase the provision of bilingual education programmes for ethnic minority children and of training in local languages for […] teachers in ethnic minority areas; allow ethnic

[99] Reports submitted by States parties under article 9 of the Convention, France, CERD/C/FRA/17-19, 22 July 2010, § 337.
[100] *Ibid.*, § 338.
[101] Reports submitted by States parties under article 9 of the Convention, France, CERD/C/FRA/20-21, 25 October 2013, § 249.
[102] Research project by Stéphanie Guyon, SOGIP, http://www.sogip.ehess.fr/spip.php?rubrique43#.
[103] TIOUKA, Alexis. *Adaptation du système éducatif dans un contexte pluriculturel et plurilingue*, op. cit. p. 15.
[104] http://www.senat.fr/basile/visio.do?id=qSEQ110116858.
[105] Comment available at http://www.franceguyane.fr/actualite/societe-social-emploi/suicides-chez-amerindiens-en-guyane/preparer-la-rencontre-lettre-ouverte-de-brigitte-wyngaarde-23-03-2011-85752.php.

> minority languages to be taught and used as a medium of instruction in schools; and support education programmes on the culture of ethnic minority groups.[106]

In the same vein, the Committee also recommended "allocat[ing] human and financial resources needed to implement the bilingual intercultural education system," and encouraged the State, "in partnership with the indigenous peoples, to develop policies to raise indigenous peoples' education levels and access to schooling of a type that conforms to the intercultural bilingual education model."[107]

However, the Committee also recommended that the State "take appropriate measures to ensure all [indigenous] children throughout the territory of the State party effectively receive education in their own languages, including by training more teachers in [indigenous] languages."[108]

3. Recommendations to the French State

Since France's position with regard to indigenous peoples and local communities (*Tribal* peoples, *Bushinenge* or *Noirs-Marrons*) constitutes a violation of Article 1 of the Convention, it is recommended that the French State adjusts its interpretation of the principles of equality and non-discrimination to that of international law.

It is recommended that the French State conduct a census of the population to identify and gain better knowledge of the various ethnic groups in order to adapt its public policies.

It is also recommended that French State recognize the differential fundamental rights of its peoples in order to stop its violation of international human rights..

For indigenous peoples and local communities (*tribal* peoples, *Bushinenge* or *Noirs-Marrons*) to no longer live as *merely tolerated* on the domain of the State, it is recommended that France abandon the old *Terra Nullius* doctrine and recognize their fundamental right to traditional territory, which also includes both a right to land and a right to the natural resources on this land.

In the meantime, the legal regime of the ZCUR, concessions, and transfers, aiming to protect the way of life of indigenous peoples must be updated over a consultation process with the implicated actors and peoples. In this respect, inconsistencies must be corrected, the concept of livelihood must be reviewed, and management methods as well as vague areas must be clarified. In addition, mining activity must be prohibited on the territories of the communities.

Lastly, health and education services must be culturally relevant.

[106] Consideration of reports submitted by States parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Vietnam, CERD/C/VNM/CO/10-14, 16 April 2012, § 14.
[107] Consideration of reports submitted by States parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Ecuador, CERD/C/ECU/CO/20-22, 24 October 2012, § 22.
[108] Consideration of reports submitted by States parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Finland, CERD/C/FIN/CO/20-22, 23 October 2012, § 14.